This opinion is nonprecedential except as provided by
Minn. R. Civ. App. P. 136.01, subd. 1(c).

STATE OF MINNESOTA
IN COURT OF APPEALS
A23-0387

State of Minnesota,
Respondent,

vs.

Heather Marie Wurtzberger,
Appellant.

Filed October 30, 2023
Affirmed
Bjorkman, Judge

Brown County District Court
File No. 08-CR-21-184

Keith Ellison, Attorney General, St. Paul, Minnesota; and

Charles W. Hanson, Brown County Attorney, Paul J. Gunderson, Assistant County Attorney, New Ulm, Minnesota (for respondent)

Cathryn Middlebrook, Chief Appellate Public Defender, Rachel Bond, Assistant Public Defender, St. Paul, Minnesota (for appellant)

Considered and decided by Connolly, Presiding Judge; Bjorkman, Judge; and Cleary, Judge.*

* Retired judge of the Minnesota Court of Appeals, serving by appointment pursuant to Minn. Const. art. VI, § 10.

NONPRECEDENTIAL OPINION

BJORKMAN, Judge

Appellant Heather Marie Wurtzberger argues that the district court abused its discretion by ordering her to pay $319,041.50 in restitution, jointly and severally with co-defendants, for collectible items that were stolen during a series of burglaries in February 2021. Wurtzberger contends that the court lacked authority to order restitution for losses that were not directly caused by the second-degree burglary offense of which she was convicted. We affirm.

FACTS

F.M. has collected tens of thousands of comic books over the span of 60 years. He stores them along with other collectibles at his parents' home (the home) in New Ulm. The home is unoccupied, but F.M. visits it at least once a month to perform routine maintenance.

In February 2021, a series of burglaries occurred at the home and many of the comic books, along with other valuable items such as coins, were stolen. On February 25, police responded to an alarm at the home. Upon arrival, officers found three individuals leaving the home. One of them was Wurtzberger. When police searched her person, they found two flashlights and a cellphone; in the backseat of her car, police observed several empty totes matching ones later found at Wurtzberger's home containing rare comic books. Police knew that Wurtzberger's son and his cousin were suspects in the earlier burglaries. A warranted search of the home Wurtzberger shared with her son revealed several boxes of stolen comic books and jars of coins.

Wurtzberger was charged with two counts of second-degree burglary, theft, receiving stolen property, possession of burglary tools, and trespass. The complaint references Wurtzberger's son and his cousin and their suspected involvement in burglaries at the home that occurred prior to February 25. Pursuant to a plea agreement, Wurtzberger pleaded guilty to one count of second-degree burglary in exchange for dismissal of the remaining charges.[1] Wurtzberger also agreed to pay "any restitution . . . joint and several with the co-defendants."

At the sentencing hearing, Wurtzberger's counsel asked the district court to reserve the issue of restitution, stating:

> As far as the restitution goes, I just don't think we have enough information at this time to have a true amount. I don't know if the—or if the State has any of the comic books in evidence that could be returned that are listed. So it's my request at this time just to reserve that restitution. Maybe set that out for a restitution hearing so we can get more information on what comic books were returned, not returned, storage, things of that nature.

Counsel also noted that the co-defendants had not been sentenced and suggested that the court hold a joint restitution hearing after those sentencings took place. The district court agreed and did not impose a fine because of the anticipated, substantial amount of restitution.

The joint restitution hearing included Wurtzberger and two co-defendants who pleaded guilty in connection with prior burglaries at the home. The district court found

[1] During the plea hearing, which took place remotely via Zoom, Wurtzberger testified that she reviewed a plea petition with defense counsel and had no questions about it. But no plea petition was filed.

F.M. was qualified to testify that the value of the stolen comic books was $319,041.50. Because of the size of his collection and the number of burglaries, F.M. was unable to assign a particular loss to a particular burglary. Wurtzberger argued that the state had not proven that any part of F.M.'s loss was the direct result of her conduct. The district court disagreed, stating in a written order that Wurtzberger was "enmeshed in the various burglaries" at the home and that because F.M. could not assign a particular loss to a particular burglary, she is jointly and severally responsible for restitution in the amount of $319,041.50.

Wurtzberger appeals.

DECISION

As part of a felony sentence, a district court may order an offender to pay restitution. Minn. Stat. § 609.10, subd. 1(a)(5) (2020). In awarding restitution, a district court must consider both the offender's ability to pay and the loss sustained by the victim of the crime. Minn. Stat. § 611A.045, subd. 1(a) (2020). "The primary purpose of restitution is to 'restore crime victims to the same financial position they were in before the crime.'" *State v. Johnson*, 851 N.W.2d 60, 65 (Minn. 2014) (quoting *State v. Palubicki*, 727 N.W.2d 662, 666 (Minn. 2007)). To that end, "when a victim sustains indivisible loss from multiple defendants' actions, the sentencing court has the authority to order restitution based on joint and several liability." *Id*. at 66. We review a restitution award for an abuse of discretion. *State v. Andersen*, 871 N.W.2d 910, 913 (Minn. 2015). A district court abuses its discretion when it misapplies the law. *State v. Boettcher*, 931 N.W.2d 376, 380 (Minn. 2019).

Wurtzberger does not challenge the amount of restitution F.M. sought or that the loss directly caused by the series of burglaries is indivisible. But, relying on *Boettcher*, she contends that she is only responsible for loss directly caused by the burglary offense she committed on February 25, which does not include the value of the stolen comic books. We are not persuaded.

Boettcher was charged with arson and burglary after he broke into, and burned down, a cabin in northern Minnesota. *Id*. at 378. A jury found him guilty of burglary but could not reach a verdict on the arson charge. *Id*. at 379. The district court ordered Boettcher to pay restitution for fire damages and clean-up expenses because the arson was factually related to the burglary. *Id*. Our supreme court reversed, clarifying that the "general rule . . . is that a district court may order restitution only for losses that are directly caused by, or follow naturally as a consequence of, the defendant's crime." *Id*. at 381.

The supreme court expressly noted that the direct-cause standard applies only to restitution ordered after a trial, stating "[p]rinciples that apply to criminal restitution in guilty-plea cases . . . are inapplicable." *Id*. at 381 n.5. This reflects the principle that courts "generally should not alter the terms of a restitution obligation negotiated as part of a plea agreement if it materially changes the expectations of the parties to the bargain." *State v. Meredyk*, 754 N.W.2d 596, 604 (Minn. App. 2008). Indeed, the supreme court has honored a plea agreement in which the defendant agreed to pay restitution to victims who were not identified in the complaint. *State v. Kennedy*, 327 N.W.2d 3, 4 (Minn. 1982) (*cited with approval in Boettcher*, 931 N.W.2d at 381 n.5). Here, the bargained-for expectation of the parties was that Wurtzberger would be jointly responsible to pay restitution for the value

of the stolen comic books, even though the burglary offense to which she pleaded guilty did not result in such loss.

Wurtzberger next argues that the state forfeited its argument that she agreed to pay restitution for the stolen comic books and, in the alternative, that the plea agreement was too vague to support the restitution award. The record defeats both arguments. First, the state has consistently grounded its restitution argument on the plea agreement. In its briefing following the restitution hearing, the state recounted that "restitution was included as part of the sentence and was part of [Wurtzberger's] plea agreement, but the amount was reserved pending a challenge to restitution." On appeal, the state's argument is the same.

Second, the record as a whole demonstrates that Wurtzberger agreed to be jointly and severally responsible for restitution related to the stolen comic books. Wurtzberger aptly notes the lack of a plea petition and the lack of detail as to restitution presented during the plea hearing. But when we consider other parts of the record, the scope of the parties' agreement is clear.

Kennedy guides our analysis. Kennedy was charged with 32 counts of theft and securities-law violations. *Kennedy*, 327 N.W.2d at 4. Pursuant to an agreement, Kennedy pleaded guilty to three counts in exchange for dismissal of the remaining counts but agreed to pay restitution. *Id*. On appeal, Kennedy argued that his restitution obligation was only to the victims of the charges he pleaded guilty to. *Id*. Our supreme court was not persuaded, reasoning that

> [a]lthough the record made at the time the pleas were entered does not indicate what the parties contemplated when they used the word "restitution," it became clear at the sentencing

> hearing that what was contemplated was reasonable restitution based not just on the losses of the parties named in the three counts but on the losses of all the victims of defendant's criminal scheme.

Id. The same is true here.

Other parts of this record clarify the scope of the restitution Wurtzberger agreed to pay when she entered her guilty plea. In a series of restitution affidavits, F.M. sought to recover the value of the stolen comic books and coins, nothing else. At the sentencing hearing, defense counsel asked the district court to leave restitution open because police continued to recover more of the stolen comic books, and because it made sense to hold a joint restitution hearing once Wurtzberger's co-defendants—neither of whom were involved in the February 25 burglary—had been sentenced. The district court agreed. And because the court expected that the restitution amount would be substantial, it did not impose a fine as part of Wurtzberger's sentence. The restitution hearing was centered on F.M.'s testimony as to the quantity and value of the comic books that had been stolen, nothing else.

In sum, the record reflects that the bargained-for agreement of the parties was that Wurtzberger would pay restitution for the stolen comic books and coins, jointly and severally with her co-defendants. Accordingly, we discern no abuse of discretion in the district court's restitution award.

Affirmed.